

ORIGINAL

Richard Rauch, #1428282 Pro se

VS

GEO Corporation,
 Ananda Babbili
 Lanette Linthicum
 Dr. Joshi
 Dr. Guillermo Porras

3-09 CV-757-D

CIVIL COMPLAINT NO.

42 U.S.C.A. § 1983

SUPPORT MEMORANDUM OF LAW AND FACTS TO EXPAND THE
 RECORD TO INSURE JURISDICTION AND
 REASONS FOR TOLLING

TO THE HONORABLE JUDGE OF THIS COURT;

Pro se Plaintiff, Rauch styled above must establish in the record at filing all pertinent facts and matters of concerning questions of jurisdiction and tolling for the court can not order expansion of the record, therefore Rauch wishes to show the court;

First jurisdiction conveiged upon administrative remedies grievance procedure was exhausted by insufficient handling of state government actions when Rauch's step one was not delivered to him in a timely manner allowing Rauch fair chance to go on to the step two level for Rauch is confined to two weeks time span after step one response, which the record shows Rauch was prohibited from filing the step two because T.D.C.J. did not return the step one for three months as seen in EXHIBIT A, THEY ruled and returned on July 18, 2007 and being on another unit by T.D.C.J. choice Rauch was on the Polunsky Unit by then and did submitt another step I to begin the process in hopes of not being barred by T.D.C.J. inadequacy of mail forwarding and to show medical department of Polunsky Unit the damage to his shoulder. Medcial fact, x-ray will not show a torn rotor cusp, and Dr. Porras of the Polunsky Unit is using the repressive cost cutting policy of T.D.C.J. when he refused any form of medical treatment and admonished Rauch for hurting his own shoulder when it was the premisis defect at the Venus facility that was cause of his slip and fall and was still

U.S. DISTRICT COURT
 NORTHERN DISTRICT OF TEXAS
 Page ID: 10
 FILED

APR 24 2009

CLERK, U.S. DISTRICT COURT
 By _____
 Deputy _____

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a Ward of the state of Texas, under a duty of care by the owner
of Venus Unit, GEO CORPORATION. **EXHIBIT B** shows the nat-
ure and subject matter of Rauch's complaint to Dr. Porras.

Rauch wishes the court to make note on July 10, 2007
the Texas Governors office named Dr. Lannette Linthicum,
Director of Texas Department of Criminal Justice's Health
Services Division to "see into this ongoing problem" as seen
in **EXHIBIT C**. A hearing was held on the Polunsky
Unit and contrary to the hearing, the summary of findings seen
in **EXHIBIT D** **MY EYE WAS NOT** discussed, and as for my
being out of compliance on taking the Naprosyn prescribed by
Dr. Porras, the surgeon who operated said **not to take** the
Naprosyn-- for it would cause bleeding in the operated eye, so
I quit taking it. I also do not have a history of shoulder
problems, my shoulder was torn during the fall on the Venus
Unit that also slammed my head into the slick concrete floor
that had no mat nor any safety features, that caused the
retina of my eye to be jarred loose, and the long wait-put off
for treatment has caused permanent blindness.

Polunsky Unit classification or Dr. Porras retaliated and
removed my medical restrictions and assigned me to work in the
box factory where the state makes a profit at unpaid labor force.
Dr. Porras, as a medical trained knowledgeable person was ful-
ly aware the pain I would endure if forced work with this eye
damage, and shoulder torn rotor cusp.

The clock kept running as was the plan of T.D.C.J. and my
parents tried to have the U.S. Department of Justice intervein
into this malicious indifferent liable cover-up, as seen in
EXHIBIT E.

After receiving my step one back from the Venus Unit
3 months late I filed a step one on the Polunsky Unit, as seen
in **EXHIBIT B** It was ruled **inappropriate**. So I
tried to have the Regional Director answer my plea for help and
was told I may not file a step II if returned due to a screening
criteria, as seen in **EXHIBIT F, A**. The Polunsky Unit griev-
ance officials Warren Worthy and Linda Martin have an ongoing
scheme and pattern and practice of using a "screening criteria"

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and other capricious and arbitrary methods of stopping any
serious complaint from reaching the courts as seen in the
dismissed cause #CIV-23642 in the 258th DISTRICT COURT. Then
again in # CIV-24362, which I Richard Rauch tried to be joined *
under the medical issue and was summarily **denied** by state Judge
Elizabeth E. Coker without stating law or fact conclusions why
even though motion before the court of that request is in the
record. That was on July, 2008 . That cause is now
pending in the Texas Ninth Court of Appeals, Beaumont, Tx. un-
der #09-08-00367-cv. The Clerk did not forward Rauch's joinder
motion document therefore this court can take jurisdiction of
that denied jurisdiction by the state court, on

On one last visit to John Sealy hospital on January 14
2009, less than 180 days ago I, Rauch was told my eye "can not
be fixed", so that is the day I have been made aware I am
permanently blind in my right eye. My family and I have been
shown beyond a reasonable doubt grievances are not going to
be handled correctly, exhausting that avenue for relief, and
state court has denied me a chance to take all my documents
and proofs to a jury of my peers,... so by default and
exhaustion of all possible avenues for relief I ask this court
to engage my constitution U.S., rights be enforced that I
was to receive "reasonable care" when the state created a
"special relationship" and took on the duty of my care.

I pray to be compensated for my loss, pain and suffering
that was far above any reasonable expectation and humane policy
that has been addressed in multiple well established cites in
various superior courts such as this,

* Argument and document to follow in First Supplemental Pleading

Respectfully submitted 4/17/2009

I, Richard Rauch do affirm and swear the above is true and
correct to the best of my knowledge and personal witness under
the penalty of perjury I make this declaration on 17 of
April 2009.

Richard A. Rauch
Richard Rauch # 1428282
Polusnky Unit
3872 FM 350 South
Livingston, Texas 77351



STEP 1

OFFENDER
GRIEVANCE FORMOffender Name: Richard Rauch TDCJ# 1428282Unit: Sanders-Estes Housing Assignment: G-5 BUnit where incident occurred: Sanders-Estes

(TAY-14)

Grievance #: 2007171842
 Date Received: JUN 19 2007
 Date Due: 7/29/07
 Grievance Code: 638
 Investigator ID #: 10743
 Extension Date: N/A
 Date Retd to Offender: JUL 18 2007

MEDICAL EMERGENCY

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Surgeon, Chaplain Caffrey, Medical When? Thurs June 14, 2007

What was their response? Medical (Andy) didn't care

What action was taken? NONE

State your grievance in the space provided. Please state who, what, when, where and disciplinary case number if appropriate.

On Tuesday my R eye started getting darker + darker, VISION LOSS. On Thursday Afternoon I made an emergency phone call to my eye surgeon Dr Syrguin and told him my symptoms. He told me and the CHAPLAIN I need to come right AWAY AND SEE HIM TODAY OR FRIDAY (14th - 15th). I could have complications with my retina surgery I had done April 16 - which means in a few short days I could be completely blind.

As soon as we hung up CHAPLAIN Caffrey relayed the urgency to the Doctor here (ANDY) and Andy didn't even care, He said, "Put in a sick-call request." Once again the CHAPLAIN stated the urgency of the matter. Andy didn't care I FINALLY see a COMPASSIONATE NURSE on Sunday. And she said she could do nothing except set up an appointment to see the Doctor on Monday.

Well, Monday has now past. Medical never called me I can hardly see at all now.

On top of that, my 2nd day here I fell on a wet floor and badly injured my left shoulder in front of 15-20 witnesses. All Andy did was give me 400 mg of Ibuprofen. My left arm is useless now. I CANNOT even toss a sheet of paper into the trash without severe PAIN.

I have my own medical practice. Been in Medical

(Received Oct 11, 2007 R Rauch)

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14 years I need immediately A LT shoulder MRI probably followed by surgery I need to see my eye surgeon no later than Wednesday June 2011
Dr Syrquin - Baylor Medical Center
400 W. I-635 PH# 972-869-1242
Plaza I Suite 350 or 1-888-222-2199
Irving TX 75063

I ALSO need Andy's full name and his MEDICAL PRACTICE ID# for my Attorney, AND GEO's Home Office Address in Florida.

tion Requested to resolve your Complaint.

Immediate transportation to above listed Dr, and a LT shoulder MRI within next few days. Probable RT eye surgery and LT shoulder surgery

Offender Signature: Richard A Blauch Date: 6-18-07

Grievance Response:

You are being followed by Hospital Galveston Ophthalmology Clinic for your right eye. You are scheduled for a follow-up with them later this month. On 6/20/07 the Provider saw you as a follow up for your right eye from Nurse Sick Call on 6/17/07. You were demanding that we take you to your free world doctor that day. You were seen by Dr. Joshi on 6/21/07. He provided you with information regarding what steps you needed to take in order to have your doctor come to the facility. Medical has not heard back from you regarding this. You arrived at Estes on 5/21/07. On 5/24/07 the 1st sick call request received from you was requesting sunglasses so you could go outside for recreation. The nurse saw you on 5/25/07 for your eye and then you brought up that you had a history of torn rotator cuff and needed surgery for it. You indicated no injury and that Motrin had helped in past. Provider saw you 5/29/07 and ordered Naproxen for your shoulder pain. You have received medical care per CMC guidelines. No other action indicated.

Signature Authority: Quinton C. David G. McComis

Date: JUL 18 2007
You are dissatisfied with the Step 1 response, you may submit a Step 2 (I-123) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

turned because: *Resubmit this form when corrections are made.

1. Grievable time period has expired.
2. Submission in excess of 1 every 7 days.*
3. Originals not submitted.*
4. Inappropriate/Excessive attachments.*
5. No documented attempt at informal resolution.*
6. No requested relief is stated.*
7. Malicious use of vulgar, indecent, or physically threatening language.*
8. The issue presented is not grievable.
9. Vacant - discontinued 9-1-00
10. Illegible/Incomprehensible.*
11. Inappropriate.*

SI Signature:

127 Back (Revised 9-1-2001)

OFFICE USE ONLY

Initial Submission

UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

2nd Submission

UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

3rd Submission

UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____



Texas Department of Criminal Justice

**OFFENDER
STEP 1 GRIEVANCE FORM**

Offender Name: Richard Rauch TDCJ# 1428282
 Unit: Polunsky Housing Assignment: 194-14
 Unit where incident occurred: Polunsky

OFFICE USE ONLY	
Grievance #:	200
Date Received:	
Date Due:	
Grievance Code:	
Investigator ID #:	
Extension Date:	
Date Rtrd to Offender:	

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Dr Porras When? Sept 17

What was their response? read below

What action was taken? NONE

State your grievance in the space provided. Please state who, what, when, where and disciplinary case number if appropriate.

On Sept 17, Monday, I went for a medical lay-in and I saw Dr. Porras about the next step in protocol for fixing my left painful shoulder which was injured in April at TDCJ.

His response, "We are not going to fix your shoulder. You can get it fixed once you get out. You should have taken better care of yourself while you were in here."

First of all, I know my rights, and I demand an apology from Dr. Porras for his inappropriate comment, and for him to be reprimanded for his failure to render proper medical care.

Secondly - look at my medical file and see who else is involved in overseeing my medical care - it's documented - The Office of the Governor is involved, as is Mr. Lannette Linthicum who is the Director of TDCJ's Health Services Division, as is the State Department and my State Representative Mrs. Powers.

I already went blind in my right eye due to the negligence of a TDCJ doctor, and now another Dr is following in his same footsteps. Not a good track record for TDCJ.

I was injured at TDCJ. My left arm is painful and useless. I am guessing, my deltoid is torn.

I had an x-ray way back in May. The next step in medical protocol is a LT shoulder MRI, followed by either surgery and/or physical therapy.

I have my own medical business and I know the

standard as previously stated, Document 70 Filed 04/24/09 Page 7 of 13 PageID 16
Followed even in prison. State + Federal law guarantee this.

I have already notified the Authorities mentioned about Dr Porras actions and inappropriate comment.

All I am requesting is a left shoulder MRI, and then surgery and/or therapy so I wont be a burden to my wife and kids once I get home because I can't work properly due to TOCs's neglect.

God Bless You for your help in this unfortunate matter.

ction Requested to resolve your Complaint.

- 1) Proper Medical care - next step LT shoulder MRI
- 2) Apology From Dr Porras

Offender Signature: Richard A Rauch Date: 9-20-07

Grievance Response:

nature Authority:

You are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

urned because: *Resubmit this form when corrections are made.

1. Grievable time period has expired.
2. Submission in excess of 1 every 7 days.*
3. Originals not submitted.*
4. Inappropriate/Excessive attachments.*
5. No documented attempt at informal resolution.*
6. No requested relief is stated.*
7. Malicious use of vulgar, indecent, or physically threatening language.*
8. The issue presented is not grievable.
9. Vacant - discontinued 9-1-00
10. Illegible/Incomprehensible.*
11. Inappropriate.*

I Signature: John A. Rauch

7 Back (Revised 9-1-2001)

OFFICE USE ONLY	
<u>Initial Submission</u>	UGI Initials: <u>AFM</u>
Grievance #:	<u>2008 0127728</u>
Screening Criteria Used:	<u>699117</u>
Date Recd from Offender:	<u>SEP 23 2007</u>
Date Returned to Offender:	<u>SEP 23 2007</u>
<u>2nd Submission</u>	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
<u>3rd Submission</u>	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____



OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

July 10, 2007

Mr. and Mrs. Donald E. Rauch
9738 Sharing Cross Court
Jacksonville, Florida 32257-5477

Dear Mr. and Mrs. Rauch:

Thank you for taking the time to contact the Office of the Governor.

Given that your correspondence discusses medical treatment, I will share your correspondence with Dr. Lannette Linthicum, Director of the Texas Department of Criminal Justice's Health Services Division.

Please let us know whenever we may be of service in the future.

Sincerely,

A handwritten signature in black ink that reads "Dede Keith by" followed by a partial signature.

Dede Keith
Administration and Constituent Services
Office of the Governor

DK:jvw

cc: Lannette Linthicum, M.D.



Texas Department of Criminal Justice

Brad Livingston
Executive Director

August 6, 2007

Donald & Karen Rauch
9738 Sharing Cross Court
Jacksonville, FL 32257

Re: Offender Richard Rauch, TDCJ-CID#1428282, Estes Facility

Dear Mr. & Mrs. Rauch:

Your correspondence addressed to Governor Rick Perry was forwarded to TDCJ Health Services Division, Patient Liaison Program for investigation and response. In it, you report concerns on behalf of your son, in which you allege that he has been denied medical attention. You state your son may have torn his rotator cuff, which makes the arm painful and useless. In addition, you state his eyelid does not open any longer and he has no sight in his right eye. Upon receipt, the facility's University of Texas Medical Branch Correctional Managed Health Care (UTMB-CMHC) medical department was contacted, the signature of Offender Rauch was obtained on an Authorization for Use and Disclosure of Protected Health Information (PHI), and his medical record reviewed.

Reviews of the available medical records reflect that your son has submitted numerous Sick Call Requests (SCR's) for his complaint of left shoulder pain. On 05/29/2007 a UTMB-CMHC medical provider evaluated your son, ordered an x-ray, and prescribed Naprosyn 500 mg to be taken twice daily for thirty days. The results of the x-ray revealed no recent fracture or acute bone deformity, articular joint relationships are intact, and soft tissues are within normal limits. On 06/26/2007, a medical provider again evaluated your son for his complaint of left shoulder pain, in which documentation reveals that your son has been non-compliant with the same prescribed medication. The medical provider re-ordered a prescription of Naprosyn, which is an anti-inflammatory that helps relieve pain and advised your son of 100 percent compliance in taking the medication. In addition, your son has been evaluated on multiple occasions for complaint of right eye problems. Most recently, on 07/23/2007, a health care provider performed retinal surgery and the discharge summary indicates your son tolerated the surgery well, a follow-up was scheduled, and he was prescribed pain medication. Documentation indicates your son has been afforded access to care regarding these issues.

This office has secured your son's signature on an Authorization for Use and Disclosure of Protected Health Information, which is in his medical record authorizing facility UTMB-CMHC staff to provide you with health information on him. It will expire on 01/29/2008, unless revoked by the offender prior to that date. For facility information you may contact, Debra Iredell, RN, BSN UTMB-CMHC, Health Administrator, Estes Facility, at 1100 Highway 1807 Venus, Texas 76084 or by telephone at (972) 366-3334.

Pursuant to Correctional Managed Health Care Policy A-12.1, offenders have been instructed to contact the facility medical department complaints coordinator, by submitting an I-60 to facilitate the resolution of health-related concerns. If the offender is not satisfied with the efforts towards informal resolution at the facility level, the offender may pursue additional review through the grievance process.

Sincerely,

Nadine Whited

Nadine Whited
Investigator III, Patient Liaison Program
Office of Professional Standards
TDCJ Health Services Division

NW/DV/lb

cc: Dede Keith, Deputy Director, Administration and Constituent Services, Office of the Governor
Lannette Linthicum, MD, CCHP-A, FACP, Director, TDCJ Health Services Division
Owen Murray, D.O., MBA, Assistant Vice President & Chief Physician Executive, UTMB-CMHC
Estes Facility Medical Management Team

Reference No.: 070142828200002

Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.

October 26, 2007

Mr. Christopher N. Cheng
Trial Attorney
Special Litigation Section
U. S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Criminal Section, PHB
Washington, D. C. 20530

Dear Mr. Cheng:

In your October 10, 2007 letter to my wife, you indicated you needed dates and factual circumstances of medical malpractice in the Texas Penal system. Please read the latest letter from our son about a Dr. Porras at the Polunsky Unit in Livingston, Texas. Our son has had other issues with this Dr. Porras that he has documented in other letters he has sent home. Our son had a pre-surgical meeting with his eye doctor in Galveston, Texas, and his eye doctor placed him on certain restrictions in preparation for the third surgery on his eye. Our son has found out that on 10/15/07 at 16:27, someone had changed his classification from medically unassigned to box factory. This was done after hours. Only someone in the administration of the prison would have had the authority to do that.

Please read our son's letter for more details. He can also give you names and other instances of inmate abuse in the prison system. He knows of one inmate who complained of chest pains and was turned away by the medical staff because he had not filed the correct paperwork. That man died of a heart attack that night. Our son also knows of other instances within the prison of similar types of medical malpractice.

Your help would certainly be appreciated.

Sincerely,

Donald E. Rauch, P. E.



Texas Department of Criminal Justice

STEP 2

OFFENDER
GRIEVANCE FORM

Offender Name: Richard Rauch TDCJ # 1428282
 Unit: Polunsky Housing Assignment: 19 Y-14
 Unit where incident occurred: Polunsky

OFFICE USE ONLY

Grievance #: 2008012428

UGI Recd Date: _____

HQ Recd Date: _____

Date Due: _____

Grievance Code: _____

Investigator ID #: _____

Extension Date: _____

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be specific). I am dissatisfied with the response at Step 1 because...

The grievance I submitted on 9-20-07 was returned to me as inappropriate.

I have been denied proper medical care by TDCJ.

I am now blind in my right eye and I am in severe pain from a probable torn left deltoid-shoulder.

My entire case is being followed closely by the Governor's Office of Texas and TDCJ's very own Director of Health Services Division, Dr Lannette Linthicum. This is noted in my TDCJ medical file. TDCJ's response to this action was inappropriate. God Bless You for your attention to this matter.

Offender Signature:

Richard A Fauch

Date: 9-27-07

Grievance Response:

Signature Authority:

Date:

Returned because: *Resubmit this form when corrections are made.

- 1. Grievable time period has expired.
- 2. Illegible/Incomprehensible. *
- 3. Originals not submitted. *
- 4. Inappropriate/Excessive attachments. *
- 5. Malicious use of vulgar, indecent, or physically threatening language. *
- 6. Inappropriate. *

CGO Staff Signature:

OFFICE USE ONLY	
<u>Initial Submission</u>	CGO Initials: _____
Date UGI Recd:	_____
Date CGO Recd:	_____
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	Comments: _____
Date Returned to Offender: _____	
<u>2nd Submission</u>	CGO Initials: _____
Date UGI Recd:	_____
Date CGO Recd:	_____
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	Comments: _____
Date Returned to Offender: _____	
<u>3rd Submission</u>	CGO Initials: _____
Date UGI Recd:	_____
Date CGO Recd:	_____
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	Comments: _____
Date Returned to Offender: _____	

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Inter-Office Communication

Administrative Review and Risk Management

TO: Rauch, Richard
TDCJ # 12128283 DEC 13 2007
RT-106 TL Unit (1)

FROM: Central Grievance Office MB for sm

SUBJECT: Improperly Submitted Grievance

The attached grievance was not submitted in the proper manner and is being returned to you. Instructions on How to Write and Submit Grievances are available in the Law Library, the Offender Orientation Handbook, and posted in prominent locations throughout your unit. The response indicated below explains your submission error. If you have further questions or need assistance you may contact the unit grievance investigator.

- Policy requires that all grievances be submitted through your unit grievance investigator within 15 days of the applicable date.
- This Step 2 appeal is being returned to you without action; however, the unprocessed Step 1 grievance # 2008013728 is under review.
- This Step 2 appeal cannot be processed without the corresponding original, answered Step 1 grievance.
- You may not submit a Step 2 appeal on Step 1 grievance # 2008013728 that was returned to you unprocessed using one of the screening criteria.